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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,973	04/05/2001	Gary T. Seim	279.363US1	4123

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EXAMINER

MANUEL, GEORGE C

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 01/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/826,973

Applicant(s)

SEIM, GARY T.

Examiner

George Manuel

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-20 is/are allowed.
- 6) ☒ Claim(s) 1-4, 9 and 10 is/are rejected.
- 7) ☒ Claim(s) 5-8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3. 6) ☐ Other: _____

Art Unit: 3762

DETAILED ACTION

Claim Rejections - 35 U.S.C. § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-4, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marcovecchio et al '951.

Marcovecchio et al show all of the claimed features except for a shockable present RR interval require that a ventricular sensing refractory period of the present RR interval be less than or equal to a first predetermined value.

Marcovecchio et al teach if the current RR interval is above a specified minimum value, the interval is considered shockable and the atrial defibrillation shock pulse is delivered. Further, to lessen the risk of inducing ventricular fibrillation, the atrial shock pulse should be delayed until the intrinsic ventricular rhythm is below a specified maximum rate and then the atrial shock should be synchronous with the sensed ventricular depolarization. Therefore, one of ordinary skill in the art would have found it obvious to shock when the ventricular sensing refractory period of the present RR interval is less than or equal to a first predetermined value.

Art Unit: 3762

Allowable Subject Matter

2. Claims 5-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
3. Claims 11-20 are allowed.
4. The following is a statement of reasons for the indication of allowable subject matter: The features of the refractory period expiring after a first predetermined time value unless extended by the detection of ventricular noise during the refractory period, and triggering delivery of the atrial defibrillation shock upon expiration of the present RR interval timer and requiring the refractory period expire without being extended.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Rahul '524 teaches detecting a ventricular depolarization and checking to determine whether the ventricular refractory period has expired and if it has expired, deliver an atrial defibrillation or a cardioversion pulse.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Manuel whose telephone number is (703) 308-2118. The examiner can normally be reached on Mon.- Fri., 9:00-5:00.


The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306 for regular communications and for After Final communications.

Serial Number: 09826973

Page 4

Art Unit: 3762

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


George Manuel
Primary Examiner
Art Unit: 3762
January 9, 2004